

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of the
Reserve Account of:

SULLY-MILLER CONTRACTING COMPANY
(Employer)

PRECEDENT
RULING DECISION
No. P-R-107
Case No. R-70-41

Employer Account No.

Claimant: Richard M. Wickham
S.S.A. No.: -----
BYB: 07209 SD: 08189

The employer appealed from Referee's Decision No. LB-R-22897 which held that the employer was not entitled to a notice of determination and ruling.

STATEMENT OF FACTS

The claimant was employed by the above named employer as a teamster commencing July 12, 1968. He was laid off due to lack of work on July 18, 1969. The lack of work was caused by a trade dispute between the employer and a union of which the claimant was not a member. The claimant was not a participant in the dispute.

Effective July 20, 1969 the claimant registered for work and filed a claim for unemployment insurance benefits. He indicated he was no longer working because of the strike. On July 24 a Notice of New Claim Filed (DE 1101C) was mailed to the employer. The employer did not respond to the notice because it considered there had been no severance of the employer-employee relationship and because it believed it had no information which would affect the claimant's eligibility for benefits.

On August 18, 1969 the claimant notified the employer he was quitting because he had obtained a job in Rhode Island. The employer took no action to submit this information to the Department at that time. Subsequently, on August 28, 1969, a Notice of Claim Filed and Computation of Benefit Amounts (DE 1545) was mailed to the employer. Under post-mark date of September 10, 1969 the employer's agent notified the Department of the claimant's quit and requested a ruling.

On September 15, 1969 the Department mailed a notice to the employer's agent denying the employer a ruling and/or determination because the employer had not responded within the statutory time limitation after the mailing of the first notice of claim to the employer.

The employer contends it is entitled to a ruling because it submitted timely information upon receipt of the notice mailed on August 28, 1969. It further contends that when the claimant was laid off on July 18, 1969 there was no termination of the employer-employee relationship because the employer continued to pay the claimant's group insurance; but, that when the claimant notified the employer on August 18 he was quitting to take a job in another locality, the employment relationship ended because the claimant would not thereafter have been available for recall.

REASONS FOR DECISION

Section 1327 of the Unemployment Insurance Code provides:

"A notice of the filing of a new or additional claim shall be given to the employing unit by which the claimant was last employed immediately preceding the filing of such claim, and the employing unit so notified shall submit within 10 days after the mailing of such notice any facts then known which may affect the claimant's eligibility for benefits."

In this case the employer was the last employing unit of the claimant immediately preceding the filing of the claim for benefits effective July 20, 1969. As such, the employer was entitled to a notice of filing of the new claim as provided by section 1327 of the code. Such notice was mailed to the employer on July 24, 1969. Under the provisions of section 1328 of the code the employer was required to submit to the Department within ten days after mailing of the notice any facts then known which could affect the claimant's eligibility for benefits. Under the provisions of sections 1030 and 1032 of the code the employer would be entitled to a ruling relieving its reserve account of charges for any benefits paid to the claimant only if it submitted timely information in response to the notice of claim filed showing that the claimant had left the employer's employ voluntarily and without good cause or was discharged from such employment for misconduct connected with his work.

The employer concedes it submitted no information to the Department in response to the notice of new claim filed. Therefore, under the provisions of section 1328 of the code it was not entitled to a notice of determination of the claimant's eligibility for benefits nor was it entitled under the provisions of sections 1030 and 1032 of the code to a notice of ruling.

We next consider whether any subsequent events or actions on the part of the employer entitled it to a notice of determination or ruling. The employer contends that the claimant's notification to the employer on August 18, 1969 that the claimant was leaving the employer's employ to take another job constitutes a leaving of work for which it was entitled to a ruling when it submitted such information to the Department in response to a notice of computation mailed to it on August 28, 1969.

Section 1030(b) of the code provides as follows:

"(b) Any base period employer who is not entitled under Section 1327 to receive notice of the filing of a new or additional

claim and is entitled under Section 1329 to receive notice of computation may, within 15 days after mailing of such notice of computation, submit to the department any facts within its possession disclosing whether the claimant left such employer's employ voluntarily and without good cause or was discharged from such employment for misconduct connected with his work, or whether the claimant was a student employed on a temporary basis and whose employment began within, and ended with his leaving to return to school at the close of, his vacation period. The period during which the employer may submit such facts may be extended by the director for good cause."

We conclude that under this section any employer who is entitled to a notice of filing of a new or additional claim under section 1327 of the code must comply with the provisions of section 1030(a) in order to establish a right to a ruling even though it may also be entitled to a notice of computation as a base period employer.

In this case the employer was entitled to, and did receive, notice of the filing of the new claim for benefits under section 1327 of the code. Even though the employer may have believed there had been no termination of the employer-employee relationship and consequently no voluntary leaving of work at that time, the fact remains it is not entitled to a ruling relieving its reserve account of charges under section 1032 of the code.

Finally, we consider the employer's possible entitlement to a determination of the claimant's eligibility for benefits because of the claimant's notification to the employer on August 18, 1969 of his leaving the state to take a job in Rhode Island. We express no opinion as to whether this was a voluntary leaving of work or merely an indication by the claimant that he would not be available for

recall once the trade dispute ended and the employer resumed operations. The fact remains that if the employer believed this information would somehow affect the claimant's eligibility for benefits, it was obligated to submit such facts within the time limitations imposed by section 1333-1 of Title 22, California Administrative Code. This section provides in part as follows:

"(a) Any employing unit which, after receipt of a notice of computation or recomputation or of the filing of a new or additional claim for benefits or of a determination or reconsidered determination, acquires facts which may affect the eligibility of the claimant that could not reasonably have been known when the notice was received, shall within 10 days after the date of acquiring such facts submit such facts to the department at the local office in which the claim was filed."

* * *

"(c) The 10-day period prescribed by this section within which the employer shall submit facts may be extended in accordance with Section 1333-3 of these regulations."

The employer was notified of the claimant's resignation of August 18, 1969. It did not furnish this information to the Department until September 10, 1969 and has submitted no reasons why the delay should be considered to be with "good cause." Therefore, the employer was not entitled to a notice of determination of the claimant's eligibility for benefits.

DECISION

The decision of the referee is affirmed. The employer is not entitled to a determination or ruling.

Sacramento, California, March 18, 1971.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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CLAUDE MINARD

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